

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**MARK R. FERRAN and MARIA R.
SWIENCICKY**

Plaintiffs,

v.

**1:04-CV-0309
(GLS/DRH)**

**WAL-MART STORES, INC.; JOHN
MANUFACTURING, LTD.; VECTOR
MANUFACTURING, LTD.; and SHARPER
IMAGE CORPORATION,**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFFS:

MARK R. FERRAN &
MARIA R. SWIENCICKY
Plaintiffs, *Pro se*
36 Winnie Street
Albany, New York 12208

FOR THE DEFENDANTS:

For Walmart
Cozen, O'Connor Law Firm
45 Broadway Atrium
16th Floor
New York, New York 10016

PETER J. McHUGH, ESQ.

For Vector
Bouck, Holloway Law Firm

MARK W. BLANCHFIELD, ESQ.

107 Columbia Street
Albany, New York 12210

For Sharper Image
Office of Kris Jackstadt
P.O. Box 12699
Albany, New York 12212

KRIS T. JACKSTADT, ESQ.

John Manufacturing, Ltd.¹

[No appearance]

**Gary L. Sharpe
United States District Judge**

DECISION AND ORDER

I. INTRODUCTION

Pro se plaintiffs Mark R. Ferran and Maria R. Swiencicky filed this action against Vector Manufacturing, Inc. and other codefendants for property damage and personal injury arising from a fire caused by defendants' electrical products. Currently before the court is a motion to dismiss the complaint by Vector for lack of personal jurisdiction and a cross-motion to sever or transfer this case by Ferran and Swiencicky. For the following reasons, the motions are **DENIED as MOOT** and the entire case is **TRANSFERRED** to the District Court in the Southern District of

¹Ferran and Swiencicky have withdrawn their claims against John Manufacturing, Ltd. See Pl.s' Br. p. 1 n.1, Dkt. No. 28. The Clerk of the Court is hereby ordered to terminate this defendant from the case prior to transferring the case.

Florida.

II. PROCEDURAL HISTORY

On March 22, 2004, this action was filed under the diversity jurisdiction of this court. See *Compl.*, Dkt. No. 1. Specifically, Ferran and Swiencicky assert causes of action for products liability and breach of warranties against Vector. See *id.* ¶¶ 100, 117. On September 30, Vector filed a motion to dismiss for lack of personal jurisdiction under FED. R. CIV. P. 12(b)(2) or in the alternative, seeking a more definite statement of the allegations in the complaint. See *Dkt. No. 8*. Ferran and Swiencicky opposed this motion and inappropriately sought leave to amend their complaint within their opposition papers. See *Dkt. No. 12*. Although their request failed to comply with the motion filing requirements of N.D.N.Y. L.R. 7.1, the court denied Vector's motion to dismiss without prejudice and granted leave to amend the complaint. See *Dkt. No. 9*.

On December 16, plaintiffs filed an amended complaint. See *Am. Compl.*, Dkt. No. 15. Thereafter, Vector filed a motion to dismiss the complaint for lack of personal jurisdiction including affidavits. See *Dkt. No. 16*; see also *Powell Aff.*, Dkt. Nos. 17, 23. In response, Ferran and Swiencicky requested that the court deny the motion or in the alternative,

transfer the claims against Vector to Florida. See *Dkt.* No. 22.

On August 10, 2005, the court issued a text order directing the parties to address the issue of transferring the entire case to the District Court in Florida. See *08/10/05 Text Order*. Specifically, Ferran and Swiencicky were directed to advise this court of their respective positions on the court's *sua sponte* transfer of this case. See *id.* All the parties have now complied and have briefed the issue for the court. See *Dkt.* Nos. 26, 27, 28.

While Vector contends that this court should grant the motion to dismiss, they conceded that this court can transfer the case regardless of whether personal jurisdiction exists over all the defendants. In addition, Vector argues that the Southern District of Florida is the most appropriate venue. Defendant Walmart also requests that the entire action be transferred to Florida and the plaintiffs do not object to the transfer. Accordingly, this case is transferred to the District Court in the Southern District of Florida.

Wherefore, it is

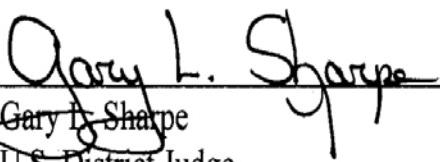
ORDERED that Vector's motion to dismiss is **DENIED** as **MOOT**; and it is further

ORDERED that plaintiffs' cross-motion to sever is **DENIED** as **MOOT**; and it is further

ORDERED that this entire case be transferred to the District Court in the Southern District of Florida.

SO ORDERED.

September 28, 2005
Albany, New York


Gary L. Sharpe
Gary L. Sharpe
U.S. District Judge